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KIMBERLY-CLARK WORLDWIDE, INC.
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KIDWELL, MICHELE M

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERT LEE POPP, JOSEPH DANIEL COENEN, DAVID ARTHUR KUEN, CHRISTOPHER PETER OLSON, and SHAWN AHMED QUERESHI

Appeal 2015-004494
Application 12/615,295
Technology Center 3700

Before: CHARLES N. GREENHUT, LISA M. GUIJT, and GORDON D. KINDER, *Administrative Patent Judges*.

KINDER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from a rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

CLAIMED SUBJECT MATTER

The claims are directed to a prefastened and refastenable pant with desired waist and hip fit. Claims 1, 19, and 20 are independent. Claim 1, reproduced below, illustrates the claimed subject matter:

> 1. A prefastened and refastenable pant, comprising:
>
> a chassis including a composite structure having linear side edges, the chassis defining a first waist region having opposed elastomeric side panels attached to the composite structure and extending transversely beyond the linear side edges, an opposite second waist region, a crotch region disposed between and interconnecting the waist regions, and a longitudinal centerline, the waist regions together defining a waistband and a hip section;
>
> at least one first fastening component disposed in the first waist region;
>
> at least one second fastening component disposed in the second waist region and adapted to refastenably engage the first fastening component; and
>
> a retractive material disposed in at least the waistband, the retractive material being adapted to be activated by retracting upon the application of energy;
>
> wherein the pant is folded through the crotch region and folded through the opposed side panels so that portions of the waist regions overlap, the first and second fastening components are engaged with one another to maintain the pant in a prefastened condition, and the pant has a waistband-to-hip circumference ratio of about 95 percent or less which results from activation of the retractive material after the fastening components are engaged to one another.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Koch	US 3,912,565	Oct. 14, 1975
Kievit	US 4,515,595	May 7, 1985

Kline	US 5,897,545	Apr. 27, 1999

REJECTIONS

Claims 1–20 are rejected under pre-AIA 35 U.S.C. § 102(b) as being anticipated by Kline.

OPINION

Appellants make a single argument for reversing the anticipation rejection of claims 1–20. Appellants argue:

> Kline has not been shown to disclose, teach, or suggest a retractive material adapted to be activated by retracting upon the application of energy per claim 1, and specifically no teaching of a retractive material adapted to be activated by retracting from electromagnetic radiation per claim 20.

Appeal Br. 3. After admitting that Kline teaches a retractive material by disclosing rubber and by incorporating Kievet which discloses retractive materials, Appellants continue, "neither Kline nor Kievet teach a retractive material adapted to be activated by retracting upon the application of energy for use in the waistband." *Id.* Appellants then repeat the sentence quoted above. *Id.* at 3–4.

The Examiner answers that Kline discloses the same material that Appellants disclose as an acceptable retractive material for use in their invention. Ans. 6.

> Kline discloses the use of elastomeric materials (col. 11, lines 64–66) and further states that the suitable elastomeric materials for the element designated as the retractive material (34) are further described with respect to extensible ear panels 62 and 64 (col. 12, lines 6–8). Regarding the ear panels 62 and 64, Kline describes a styrene block copolymer as being suitable as set forth

> in col. 15, lines 38–40. As such, Kline provides the very same type of suitable retractive material as set forth in the instant application and the material will therefore also be fully capable of being adapted to activate by retracting upon the application of energy, as claimed.

Id; *see also* Final Act. 4. Kline incorporates by reference Kievet which teaches heat activated elastic waist elements. Kievet 8:3–22.

We agree with the Examiner that Kline discloses "a retractive material (34) disposed in at least the waistband and being fully capable of performing the recited function" as claimed. Final Act. 3. The Specification identifies elastomers useful in retractive materials. "Suitable elastomeric thermoplastic polymers include styrene block copolymer such as, for example, those available under the trademark KRATON® from Shell chemical Company of Houston Texas USA." Spec. 7:7–10. Kline discloses an identically described elastomer which the Examiner finds meets the limitations of claim 1: "Examples of suitable elastomeric films include Clopay 2870, a styrene block copolymer available from Clopay Corporation of Cincinnati Ohio and Exxon 550 available from the Exxon chemical Company of Lake Zürich Illinois." Klein 15:38–42. Kievet is incorporated by reference into Klein and discloses waistband materials that contract upon heating. Kievet 8:3–22. This disclosure meets the limitation in claims 1 and 19 for "retracting upon the application of energy" (Appeal Br. 5, 7 (Claims App'x.)) and the limitation in claim 20 for "retracting upon the application of energy from electromagnetic radiation"[1] (*id.* at 8 (Claims App'x.)). In

[1] The Examiner correctly found (Final Act. 5; Ans. 6) that heat may be transferred as electromagnetic radiation. *See*, e.g., Radiation Heat Transfer: A Statistical Approach, Vol. 1, James Robert Mahan, John Wiley & Sons, 2002 (ISBN 0-471-21270-9), p. 5 ("[R]adiation heat transfer does not

view of the identical disclosure in Kline of a styrene block copolymer used for the same purpose in a similar product, and that these materials may be made to contract through the application of energy, including electromagnetic radiation, we are not persuaded by Appellants' naked assertion that Kline does not show a retractive material adapted to be activated by retracting upon the application of energy per claims 1 and 19 or upon the application of electromagnetic radiation per claim 20. As the Examiner has established a sound basis for believing polymers to be identical, and thus to exhibit identical properties, the burden shifts to Appellants to overcome, with argument or evidence, the apparent identity of Appellants' claimed subject matter and that of the prior art. *In re Spada,* 911 F.2d 705, 708–709 (Fed. Cir. 1990). Here, Appellants' argument is really nothing more than a general denial that the claim limitation at issue was to be found in the cited reference. 37 C.F.R. § 41.37(c)(1)(vii) requires more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art. *See In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011). Although we have considered the Appellants' position as stated in their Appeal Brief, we find it unsupported and unpersuasive in the unchallenged light of the Examiner's Final Rejection and Answer.

DECISION

The Examiner's rejection of claims 1–20 is affirmed.

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require the presence of an intervening medium. Rather heat is transferred from the warmer body to the cooler body by *electromagnetic radiation*.").

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED